

1                   **UNITED STATES DISTRICT COURT FOR THE**  
2                   **EASTERN DISTRICT OF MISSOURI**  
3                   **EASTERN DIVISION**

4                   CARL AND JANICE DUFFNER,

5                   Plaintiffs,

6                   v.

7                   CITY OF ST. PETERS, a  
8                   municipality and political  
9                   subdivision of the State of  
10                  Missouri,

11                  Defendant.

12                  Case No. 4:16-cv-1971

13                  COMPLAINT FOR DECLARATORY AND  
14                  INJUNCTIVE RELIEF – CIVIL RIGHTS  
15                  [42 U.S.C. § 1983]

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16                  **COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

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17                  INTRODUCTION

18                  1.         The Plaintiffs in this case, Carl and Janice Duffner, have created a well-  
19                  tended, beautiful flower garden that covers their entire yard. None of the plants in  
20                  the Duffners' garden are illegal, and their garden does not contain any grass because  
21                  Janice is allergic to grass.

22                  2.         Although the Duffners' flower garden is perfectly harmless, as of the  
23                  date that this Complaint is being filed Carl and Janice are subject to criminal fines  
24                  of more than \$180,000 and imprisonment for more than 20 years because their flower  
25                  garden does not comply with St. Peters Code § 405.390(A)(4), an ordinance of St.  
26                  Peters, Missouri, ("the City") which forces resident private property owners to devote  
27                  at least half of their yards to the cultivation and maintenance of "turf grass." This

ordinance will henceforth be referred to as “the Turf Grass Mandate.” St. Peters Code § 405.815, which provides the penalties for non-compliance with the Turf Grass Mandate, will be referred to as “the Penalty Provision.”

3. If the City is permitted to impose draconian fines and imprisonment simply because a citizen chooses to cultivate on their own private property lawful, harmless plants of their own choosing instead of a potentially harmful plant of the government's choosing, there is no longer any principled limit to the government's control over either the property or the owners.

4. This civil rights lawsuit, brought pursuant to 42 U.S.C. § 1983, seeks primarily to preserve and to vindicate the Duffners' rights to use their private property in lawful, harmless ways of their own choosing, and to be free of excessive fines and cruel and unusual punishments; these are fundamental constitutional rights protected by the Eighth and Fourteenth Amendments to the U.S. Constitution, and also by Article I, sections 21, 26, and 28, of the Missouri Constitution.

## JURISDICTION AND VENUE

5. The Duffners bring this civil rights lawsuit pursuant to the Eighth and Fourteenth Amendments to the United States Constitution; the Civil Rights Act of 1871, 42 U.S.C. § 1983; and the Declaratory Judgments Act, 28 U.S.C. § 2201. They seek (1) a declaratory judgment that the Turf Grass Mandate is unconstitutional, both on its face and as applied to them; (2) a declaratory judgment that the Penalty Provision is unconstitutional, as applied to them; (3) a declaratory judgment that the

Turf Grass Mandate exceeds the zoning authority granted the City under Missouri law; (4) preliminary and permanent injunctions preventing the City from enforcing the Turf Grass Mandate; (5) nominal damages; and (6) reasonable attorney fees.

6. This Court has jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 (federal questions arising under the constitution and statutory laws of the United States), 1343 (an action brought to redress deprivations under color of state law of rights, privileges, and immunities secured by the U.S. Constitution and an action to secure equitable relief under an act of Congress providing for the protection of civil rights), 1367 (supplemental jurisdiction over claims related to those giving rise to original jurisdiction in U.S. District Court), and 2201 (authority to issue declaratory judgment).

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2) because the events giving rise to the Duffners' claims occurred in the City of St. Peters, Missouri.

8.      Venue is proper in the Eastern Division pursuant to Local Rule 3-2.07(1).

## PARTIES

9. Plaintiffs Carl and Janice Duffner own and live in a residence located at 1 Fishers Hill Drive in St. Peters, Missouri.

10. Defendant City of St. Peters, Missouri, is a municipality and a political subdivision of the State of Missouri.

## ORDINANCES AT ISSUE

11. St. Peters Code § 405.390(A)(4) is part of Chapter 405 of the St. Peters Code and was enacted by the St. Peters Board of Aldermen on October 23, 2008, by the adoption of Ordinance 5096; this provision was adopted under color of law.

12. Section 405.390(A)(4) is entitled "Landscaping and Screening—Residential Districts." It reads:

"It shall be at the discretion of the individual property owners to landscape their lots; however, at any given time... [a]ll landscaping shall be properly maintained according to City ordinances presently in effect. ***A minimum of fifty percent (50%) of all yard areas shall be comprised of turf grass.*** Trees shall not be planted within six (6) feet of a property line in the side and rear yard. The individual owner shall be responsible for such maintenance." (emphasis added)

13. The only portion of § 405.390(A)(4) at issue in this case is the single sentence emphasized above, in which the City requires that at least fifty percent of all residential yard areas must be planted with “turf grass.”

14. All efforts the City has made and will make to enforce the Turf Grass Mandate are done under color of law.

15. Although the Duffners contend that the one highlighted sentence constituting the Turf Grass Mandate is facially unconstitutional, the Plaintiffs emphasize that in this case they ***do not*** contest the City's general authority to enact zoning ordinances in accordance with state statutes, nor do they contest the validity

1 of any law that might prohibit the cultivation or maintenance of plants in a manner  
2 that might constitute a nuisance or otherwise might negatively impact the public  
3 health and safety.

4       16. The Turf Grass Mandate does not make any reference to “weeds” or  
5 otherwise prohibit property owners from having “weeds” on their property, nor have  
6 the Duffners been accused of violating any “weed” ordinance; “weeds” are not in any  
7 way at issue in this case.

8       17. The Turf Grass Mandate does not prohibit private property owners  
9 from cultivating any particular species or category of plant in their yards; all of the  
10 flowers and decorative plants the Duffners are cultivating are perfectly lawful, so  
11 this case is not in any way about the cultivation of illegal plants.

12       18. The Turf Grass Mandate does not limit the height of the required turf  
13 grass, nor does it limit the height of any other plant, nor have the Duffners been  
14 accused of violating any ordinance limiting the height of plants on their property;  
15 this case is not in any way about overgrown plants of any variety.

16       19. The Turf Grass Mandate does not make any reference to “vermin” or  
17 otherwise prohibit property owners from having “vermin” on their property, nor have  
18 the Duffners been accused of harboring “vermin” on their property; “vermin” are not  
19 in any way at issue in this case.

20       20. The City has no evidence that merely planting a certain percentage of  
21 a yard with either flowers or turf grass will have any predictable effect on the  
22 presence or prevalence of “vermin.”  
23

1       21. The Turf Grass Mandate does not state that failure to comply with the  
2 mandate creates a “nuisance.”

3       22. The City has no evidence that a well-maintained, weedless yard that  
4 contains plants other than turf grass should be considered a “nuisance.”

5       23. The Duffners have not been accused of maintaining a “nuisance” on  
6 their property, nor of violating any ordinance making it unlawful to maintain a  
7 “nuisance” on their property; this case is not in any way about the maintenance of a  
8 “nuisance” on private property.

9       24. St. Peters Code § 405.815 was enacted by the St. Peters Board of  
10 Aldermen and states the penalties for violations of Chapter 405; this provision was  
11 adopted under color of law.

12       25. Section 405.815 states that the penalties for violations of Chapter 405  
13 are as follows:

14           “1. Except as provided in Subsection (4) of Section 89.120, RSMo., the  
15 owner or general agent of a building or premises where a violation of  
16 any provision of said regulations has been committed or shall exist...  
17 shall be guilty of a misdemeanor punishable by a fine of not less than  
18 ten dollars (\$10.00) and not more than two hundred fifty dollars  
19 (\$250.00) for each and every day that such violation continues or by  
20 imprisonment for ten (10) days for each and every day such violation  
21 shall continue or by both such fine and imprisonment in the discretion  
22 of the court.

1       “Notwithstanding the provisions of Section 82.300, RSMo., however, for  
2 the second (2<sup>nd</sup>) and subsequent offenses involving the same violation at  
3 the same building or premises, the punishment shall be a fine of not less  
4 than one hundred dollars (\$100.00) or more than five hundred dollars  
5 (\$500.00) for each and every day that such violation shall continue or by  
6 imprisonment or ten (10) days for each and every day such violation  
7 shall continue or by both such fine and imprisonment in the discretion  
8 of the court.

9       “2. Any such person who having been served with an order to remove  
10 any such violation shall fail to comply with such order within ten (10)  
11 days after such service or shall continue to violate any provision of the  
12 regulations made under authority of Section 89.010 to 89.140, RSMo., in  
13 the respect named in such order shall also be subject to a civil penalty  
14 of two hundred fifty dollars (\$250.00).

15       “3. Nothing herein contained shall prevent the City from taking such  
16 other lawful action as it deems necessary to prevent or remedy any  
17 violation.”

19       26. Upon information and belief, St. Peters Code § 405.815 prescribes the  
20 penalties the City is required to impose on the Duffners and any other of the City’s  
21 residential property owners who do not comply with the Turf Grass Mandate.

22       27. The Penalty Provision establishes a mandatory minimum daily fine for  
23 violations of the Turf Grass Mandate, and also grants a court discretion to impose

additional fines and imprisonment up to a set maximum daily penalty. § 405.815.1.

28. The Penalty Provision authorizes the imposition of a separate penalty for each day a person does not comply with the requirements of St. Peters Code Chapter 405 (which includes the Turf Grass Mandate) and it does not establish a statute of limitations to limit the City's ability to seek penalties for violations; the only limit to the extent of the fines and prison time that a citizen might face for refusing to comply with the Turf Grass Mandate is the number of days they have been out of compliance with the Turf Grass Mandate. *Id.*

29. For example, if the first time an owner chose not to comply with the Turf Grass Mandate their non-compliance lasted for 365 days, they would face a minimum fine of \$3,650, a maximum fine of \$91,250, and up to ten years in prison; if theirs was a second or subsequent offense, after 365 days of noncompliance they could face a minimum fine of \$36,500, a maximum fine of \$182,500 and imprisonment for a term of ten years.

## **FACTUAL BACKGROUND**

30. Carl and Janice Duffner own and live in a home located at 1 Fishers Hill Drive in St. Peters, Missouri; the City has zoned this property as R-1 Single Family Residential.

31. Shortly after purchasing their property in 2002, Carl and Janice began converting their entire yard into a lush, well-tended garden full of flowers and ornamental greenery; this conversion was designed to stabilize a hill in their back yard, to deter erosion that had been resulting from water draining into their yard

1 from city property, and also to minimize Mrs. Duffner's allergic reactions from  
2 exposure to grass pollen.

3       32. The Duffners' yard now comprises the landscaped hillside, mulched  
4 areas, various planting beds, two small ponds, pathways, and seating areas.

5       33. The foliage is a mix of flowering plants and decorative greenery,  
6 including in many places ground cover that gives an appearance, height, and scale  
7 similar to grass, but the yard does not contain any turf grass.

8       34. At some point prior to May 14, 2014, an unidentified person complained  
9 to the City that the Duffners did not have any turf grass in their yard; on May 14,  
10 2014, Julie Powers, the City's Director of Planning, Economic and Community  
11 Development, notified the Duffners that failure to maintain turf grass on fifty  
12 percent of their yard would constitute noncompliance with the Turf Grass Mandate.  
13 See May 14, 2014, Letter From Julie Powers, Attached as Exhibit 1.

14       35. On May 23, 2014, the Duffners submitted to the City an application  
15 requesting a variance that would completely exempt their property from the Turf  
16 Grass Mandate. See Duffner Application for Variance, Attached as Exhibit 2.

17       36. In a sworn statement made to the St. Peters Board of Adjustment on  
18 June 18, 2014, Julie Powers stated as part of "the City's position" in regard to the  
19 Duffners' request for a total exemption from the requirements of the Turf Grass  
20 Mandate that the Duffners' plants are "very attractive and well kept," and that  
21 "there is a lot of ground cover which is low to the ground and, therefore, gives an  
22 appearance, height, and scale that is similar to grass." A copy of the Minutes of the  
23

1 June 18, 2014, St. Peters Board of Adjustment Hearing are attached as Plaintiffs'  
2 Exhibit 3.

3       37. After a hearing before the St. Peters Board of Adjustment held on June  
4 18, 2014, the Board of Adjustment decided not to grant the requested total variance  
5 the Duffners had requested, and instead purported to grant a variance that required  
6 the Duffners to plant at least five percent of their property with turf grass, and to  
7 locate that turf grass "in the front or in the side yard in front of the homeowner's  
8 fence."

9       38. The Board of Adjustment issued Conclusions of Law justifying its  
10 decision to grant the variance, concluding that (1) the variance would not impair the  
11 supply of light or air to the adjacent properties; (2) the variance would not increase  
12 congestion in the public streets; (3) the variance would not impact the safety of the  
13 community; and (4) the variance would not impact the general health and welfare of  
14 the community. *See* Board of Adjustment Findings of Fact and Conclusions of Law,  
15 Attached as Exhibit 4.

16       39. Julie Powers notified the Duffners that they were required to comply  
17 with the Turf Grass Mandate, as modified by the variance, no later than December  
18 1, 2014. *See* July 1, 2014, Letter From Julie Powers, Attached as Exhibit 5.

20       40. Because they believe the City has no constitutional or statutory  
21 authority to require them to cultivate and maintain on their private property a plant  
22 they do not want and that makes Janice sick, the Duffners did not comply with the  
23 Turf Grass Mandate by December 1, 2014, and as of the filing of this Complaint they  
24

1 still have not planted any turf grass in their yard.

2       41. The Duffners love their yard as it is, full of well-tended flowers and  
3 ornamental greenery; both for aesthetic and financial reasons, as well as for reasons  
4 of Janice's physical comfort, they have no desire to plant any turf grass in it.

5       42. Maintaining turf grass in residential yards is bad for the environment  
6 because it wastes water to grow the turf grass, can lead property owners to introduce  
7 large quantities of polluting chemicals in the form of herbicides and pesticides, can  
8 lead to increased levels of greenhouse gasses, and frequently leads to increased  
9 consumption of fossil fuels due to the requirement that grass must be kept below a  
10 certain height.

11       43. In recognition of the negative environmental effects of grass yards, the  
12 trend among cities all over the nation has been to limit the percentage of turf grass  
13 a property owner may maintain.

14       44. In addition to the negative environmental consequences of grass yards,  
15 maintaining turf grass requires the property owner either to exert physical labor or  
16 to pay for someone else to perform that labor. The Duffners do not wish to devote  
17 physical labor or financial resources to maintaining a plant they do not want on their  
18 private property.

20       45. Among the bundle of rights historically associated with private  
21 property ownership are the owner's right to use their property in any lawful and  
22 harmless way and to refrain from using their property in any way the owner finds  
23 disadvantageous.

1       46. By requiring Carl and Janice to destroy part of their harmless, lawful  
2 flower garden and replace it with turf grass, the City has usurped for itself  
3 fundamental rights that belong to private property owners.

4       47. Upon information and belief, the City has no evidence that the  
5 Duffners' choice to use their private property as a flower garden has diminished the  
6 value of any identifiable other person's private property.

7       48. Upon information and belief, the City has no evidence that planting at  
8 least fifty percent of the Duffners' private property with turf grass would appreciably  
9 increase the value of any other identifiable person's private property.

10      49. Upon information and belief, the City has no evidence that planting at  
11 least five percent of the Duffners' private property with turf grass would appreciably  
12 increase the value of any other identifiable person's private property.

13      50. Upon information and belief, Carl and Janice are subject to penalties  
14 required under § 405.815 because they did not bring their property into compliance  
15 with the Turf Grass Mandate as of December 1, 2014, as instructed by the City.

16      51. On October 18, 2016, the City sent another warning letter to the  
17 Duffners, commanding them to comply with the Turf Grass Mandate by December  
18 16, 2016, and stating that if they did not, they would be issued a summons. A copy  
20 of this October 18, 2016 Letter is attached as Exhibit 6.

21      52. The Penalty Provisions are mandatory, not discretionary.

22      53. Furthermore, if the City contends that it does not intend to apply the  
23 Penalty Provisions against the Duffners for their noncompliance with the Turf Grass

1 Mandate, this would acknowledge that the Turf Grass Mandate is so devoid of any  
2 legitimate public purpose that it need not be enforced.

3 54. Upon information and belief, no appellate court in the nation has ruled that  
4 the government may force all owners of private residential property in a specified  
5 jurisdiction to dedicate an arbitrary percentage of their private residential property  
6 to the cultivation and maintenance of a plant the property owners may not want.

7 55. The Turf Grass Mandate is a purely irrational effort by the City to force  
8 private property owners to use that private property in a way of the City's choosing,  
9 rather than a way of the owners' choosing.

10 56. The City cannot lawfully intrude onto the Duffners' property, tear out their  
11 flower garden, and replace it with turf grass, so the City is attempting to impose  
12 draconian penalties that will compel the Duffners—against their will—to do what  
13 the City is powerless to do directly.

14 57. If the City has the power to impose the Turf Grass Mandate, there is no  
15 principled reason that the City could not impose other mandates on its citizens, such  
16 as compelling them to devote a certain portion of their property to the installation  
17 and maintenance of a swimming pool, or compelling them to put up decorative lights  
18 of the government's choosing during the holiday season each year.

CLAIMS FOR RELIEFCOUNT I

**Deprivation of Fundamental Right to Use Private Property  
in Harmless, lawful manners of the Owner's Choosing and of Fundamental  
Right to Exclude Unwanted Persons from Private Property  
(42 U.S.C. § 1983; U.S. Const. Amend. XIV; Mo. Const. Art. I, § 10)**

58. The Fourteenth Amendment of the U.S. Constitution precludes any  
State from “depriv[ing] any person of life, liberty, or property, without due process  
of law.” U.S. Const. Amend. XIV, § 1; *see also* Mo. Const. Art. I, § 10.

59. The property rights Carl and Janice are asserting are deeply embedded  
in the English and American legal traditions; even before the founding of the  
American republic courts recognized that “a person’s right to property included ‘the  
free use, enjoyment, and disposal of all his acquisitions.’” *See* 1 W. Blackstone,  
*Commentaries on the Laws of England* 125 (1769).

60. Shortly after the ratification of the U.S. Constitution and the Bill of  
Rights, which expressly protects citizens’ right to property, James Madison observed  
that the protection of private property is one of the reasons people institute  
governments and that, having established constitutional safeguards against the  
direct taking of private property, the United States should also not allow government  
*indirectly* to deprive citizens of their property rights. *See* James Madison, “Property”  
(1792), in 6 *The Writings of James Madison* 103 (G. Hunt ed. 1906).

61. Courts in Missouri and all over the country have long recognized that  
the right to own, possess, and make harmless, lawful use of private property is one  
of the fundamental constitutional rights that protects citizens against improper

1 government intrusion; a central aspect of citizens' property rights is the owner's  
2 authority to control the asset in question.

3       62. The Missouri Supreme Court, in particular, has observed that the right  
4 to property includes "ownership and possession and also right to use in enjoyment  
5 for lawful purposes." *See Home Builders Ass'n of Greater St. Louis v. State*, 75 S.W.3d  
6 267, 271 (Mo. banc 2002).

7       63. In the instant case, the Defendant's Turf Grass Mandate usurps the  
8 Duffners' fundamental right to use their private property in a harmless, lawful  
9 manner of their own choosing.

10      64. Nothing in Missouri law or St. Peters' ordinances make it unlawful for  
11 citizens to cultivate and maintain a flower garden on their property.

12      65. The City has no evidence that any identifiable person has been, is being,  
13 or is likely to be harmed as a consequence of the Duffners' decision to cultivate and  
14 maintain a flower garden on their property.

15      66. Although it is perfectly lawful for the Duffners to devote any given part  
16 of their entire yard to the cultivation and maintenance of a flower garden on their  
17 property, and although their decision to do so has not harmed, is not harming, and  
18 does not threaten to harm any identifiable person, the Turf Grass Mandate threatens  
19 the Duffners' fundamental right to put their private property to a harmless, lawful  
20 use.

22      67. Instead, the Turf Grass Mandate requires Carl and Janice to cultivate  
23 and maintain on their private property a plant of the government's choosing even  
24

1 though the presence of that plant will not promote the public health and safety and  
2 will negatively impact Janice's health and comfort.

3       68. The Turf Grass Mandate infringes upon the Plaintiffs' fundamental  
4 property rights, protected under the Fourteenth Amendment of the U.S.  
5 Constitution.

6       69. A law that infringes upon a fundamental right is subject to strict  
7 scrutiny.

8       70. The Turf Grass Mandate is not supported by any compelling  
9 government interest and it is not narrowly tailored to burden citizens' fundamental  
10 property rights only so much as is reasonably necessary to accomplish a compelling  
11 government interest.

12       71. Governmental interference with a fundamental right may be sustained  
13 only upon a showing that the legislation is closely tailored to serve an important  
14 governmental interest.

15       72. Furthermore, the Turf Grass Mandate is facially unconstitutional  
16 under **any** standard of scrutiny because it is unreasonable, arbitrary, and  
17 unnecessary for the advancement of any compelling or permissible state objective;  
18 in short, the Turf Grass Mandate is "truly irrational."

20       73. As the Board of Adjustment acknowledged in its Conclusions of Law  
21 regarding the Duffners' variance request, the amount (or absence) of turf grass in a  
22 residential yard does not affect the supply of light or air to adjacent properties, does  
23 not increase congestion in the public streets, does not impact the safety of the

1 community, and does not impact the general health and welfare of the community.

2       74. The Turf Grass Mandate is truly irrational primarily, but not  
3 exclusively, because it requires residential property owners to use their property and  
4 involuntarily to apply their labor for the cultivation and maintenance of a  
5 governmentally-selected type of plant even though the presence or absence of that  
6 plant will not impact the safety, general health, or welfare of the community.

7       75. Unlike familiar municipal ordinances prohibiting noxious weeds or  
8 establishing a maximum height for grass, the Turf Grass Mandate does not prohibit  
9 a potentially harmful use of property.

10      76. The Turf Grass Mandate merely requires owners of residential property  
11 in St. Peters to dedicate a specific, arbitrary percentage of their yard to the  
12 cultivation of a plant selected by the government.

13      77. The Turf Grass Mandate is truly irrational primarily, but not  
14 exclusively, because the City has no evidence that the presence of turf grass in  
15 residential yards serves any compelling or permissible governmental objective, much  
16 less that planting a specific percentage of a yard with turf grass is necessary for  
17 accomplishing such a purpose.

18      78. The government cannot assert any legitimate objective sufficient to  
19 justify imposing the Turf Grass Mandate, which forces citizens to plant and  
20 permanently maintain on their own private property plants of the government's  
21 selection, depriving those private property owners of their fundamental right to use  
22 their private property in harmless, lawful manners of the property owner's own

1 choosing.

2       79. The Duffners contend that whatever interest the City might have in the  
3 “aesthetics” of residential properties, those interests alone cannot be sufficient  
4 justification for depriving private property owners of their constitutionally protected  
5 right to use their private property in a harmless, lawful way.

6       80. The City cannot legitimately assert an interest in maintaining certain  
7 aesthetic uniformity because nothing in the Turf Grass Mandate dictates that  
8 private property owners must plant the required grass in a place visible to the public;  
9 many property owners could comply with the mandate without planting any grass  
10 in a place visible to the public.

11       81. Thus, the Duffners contend that because the Turf Grass Mandate does  
12 not specify where on property turf grass must be maintained, the Turf Grass  
13 Mandate cannot serve whatever aesthetic interest the City might have in requiring  
14 private property owners to plant at least half of their property with turf grass.

15       82. In the alternative, the Turf Grass Mandate violates the fundamental  
16 right to exclude unwanted persons or things from their private property.

17       83. By enacting the Turf Grass Mandate, the City has assumed permanent  
18 control over how the City’s private property owners will use at least half of their yard  
19 space, requiring the owners to submit to the permanent physical occupation of a  
20 large part of their property by unwelcome, health-destructive plants.

21       84. The constitutionally-protected right to private property includes “the  
22 exclusive possession **and control** of [the owned] property, and the right to devote it

1 to such lawful uses as will subserve" the owner's interests. *See City of Fredricktown*  
2 *v. Osborn*, 429 S.W.2d 17, 22 (Mo. App. 1968).

3       85. The Turf Grass Mandate not only deprives property owners of choice as  
4 to what they will grow on at least half of their private property, it imposes a  
5 permanent obligation on the owner to cultivate and maintain that unwanted  
6 physical presence on their property for no reason other than that the government  
7 commands it.

8       86. That the government has, by fiat, required property owners not only to  
9 accept on their private property an unwanted physical presence, but to cultivate and  
10 maintain that physical presence, unjustifiably denies the property owners their  
11 fundamental right to exclude unwanted persons or things from their private  
12 property.

13       87. It would plainly be a violation of citizens' property rights for the  
14 government to come onto private property, forcibly tear out harmless, lawfully-  
15 grown flowers and replace them with turf grass, so the City cannot avoid the  
16 violation by forcing its residents, on pain of extraordinary fines and jail time, to do  
17 what the City could not lawfully do itself.

18       88. If the City has the power to force property owners to devote a certain  
19 percentage of their property to the cultivation and maintenance of a government-  
20 designated plant, there is no principled limit to the government's power to dictate  
21 what property owners must put or maintain on their property.

22       89. The City's position regarding property rights is that citizens have no

1 constitutional protection if a government passed a law requiring them to cover a  
2 specified percentage of their house with holiday lights every December.

3       90.     The City's position regarding property rights is that citizens would have  
4 no constitutional protection if the City passed a law requiring them to put up and  
5 maintain around their yard a fence of a government-designated design.

6       91.     The City's position regarding property rights is that citizens would have  
7 no constitutional protection if the City passed a law requiring them to install and  
8 maintain a swimming pool that covered a certain percentage of the yard.

9       92.     The Duffners contend that if constitutional protection for citizens'  
10 property rights is to have any significance, those rights must create an articulable  
11 limit on the extent to which government may interfere with a citizen's choices  
12 regarding the use of their private property; the Turf Grass Mandate defies any such  
13 articulable limit.

14       93.     The Turf Grass Mandate threatens to impose significant and  
15 irreparable harm on the Plaintiffs, including the loss of their constitutional rights,  
16 monetary damages, and physical discomfort in the form of Mrs. Duffner's sensitivity  
17 to grass pollen.

18       94.     Unless this Court declares the Turf Grass Mandate unconstitutional on its  
19 face and enjoins the Defendant from enforcing the Turf Grass Mandate, the  
20 Plaintiffs will suffer great and irreparable harm.

## COUNT II

**Violation of Prohibition Against  
Excessive Fines and Cruel and Unusual Punishment  
(42 U.S.C. § 1983; U.S. Const. Amend. VIII; Mo. Const. Art. I, § 21)**

95. The Plaintiff incorporates by reference all of the preceding paragraphs in this Complaint as if fully set forth herein.

96. The Eighth Amendment to the U.S. Constitution (made applicable to state and local governments through the Fourteenth Amendment) and Article I, § 21 of the Missouri Constitution forbid state and local governments from imposing excessive fines or inflicting cruel and unusual punishments.

97. A penalty violates the Excessive Fines Clause of the Eighth Amendment if it is “grossly disproportional” to the gravity of the offense.

98. The fines authorized by the Penalty Provisions are imposed as punishment upon individuals who have violated Chapter 405 of the St. Peters Code.

99. The City has no evidence that a citizen's decision to plant flowers and decorative greenery on their private property rather than turf grass causes any quantifiable harm to others.

100. The City has no evidence that a citizen's decision to plant flowers on their private property rather than turf grass defrauds the City or takes money out of the public treasury.

101. The City has no evidence that a citizen's decision to plant flowers on their private property rather than turf grass indicates that the person making this choice has a depraved mind or is in any cognizable sense a threat to the health or safety of

1 the community.

2 102. The liability for fines and prison time authorized by § 405.815 continue to  
3 accumulate each day the owner is out of compliance and the ordinance establishes  
4 no limit on the fines and prison time that may accumulate if a property owner  
5 remains out of compliance with one of the provisions of Chapter 405, including the  
6 Turf Grass Mandate.

7 103. The City has not asserted that the Duffners' decision not to comply with the  
8 Turf Grass Mandate implicates any other "illegal" activities.

9 104. The Duffners are senior citizens; any fines they are forced to pay would  
10 severely impact their livelihood and imprisonment of any length of time would be  
11 extremely hard on them.

12 105. As of the filing of this Complaint, Carl and Janice have been out of compliance  
13 with the Turf Grass Mandate for each of the 749 days since the December 1, 2014,  
14 deadline the City gave them for compliance.

15 106. Consequently, pursuant to the Penalty Provisions, Carl and Janice are facing  
16 a minimum penalty of \$7,490 and a maximum penalty of \$187,250 **and** 7,490 days  
17 (20 years, 190 days) in prison because they have chosen to grow flowers rather than  
18 a government-mandated plant that makes Janice sick.

20 107. Even the minimum penalty the Duffners are facing is grossly disproportionate  
21 to an "offense" that poses no significant risk to the public health and safety, but the  
22 maximum penalty is "truly irrational" and plainly excessive.

23 108. Likewise, the penalties required under § 405.815 are so grossly

1 disproportionate to the “offense” that they must be considered “cruel and unusual.”  
2  
3 109. Unless this Court declares § 405.815 unconstitutional as it is threatened to be  
4 applied to the Duffners and enjoins the Defendant from enforcing § 405.815 in  
5 relation to violations of the Turf Grass Mandate, the Plaintiffs will suffer great and  
irreparable harm.

6 **COUNT III**

7 **Taking of Private Property for Private Use and**  
8 **Exceeding Proper Scope of Police Power**  
9 **(Mo. Const. Art. I, § 28)**

10 110. The Plaintiffs incorporate and reallege the allegations contained in the  
foregoing paragraphs of this Complaint as if set forth fully herein.

11 111. Article I, § 28 of the Missouri Constitution provides: “That private property  
shall not be taken for private use with or without compensation... and that when an  
attempt is made to take private property for a use alleged to be public, the question  
whether the contemplated use be public shall be judicially determined without  
regard to any legislative declaration that the use is public.”

12 112. To the extent that the City might try to claim that the Turf Grass Mandate is  
intended to subsidize residential private property values, residential property values  
are a matter of private interest, not a “public use.”

13 113. Thus, a government taking of private property rights exclusively for the  
purpose of subsidizing the value of private property is prohibited by Article I, § 28 of  
the Missouri Constitution.

14 114. Under the plain terms of Article I, § 28 of the Missouri Constitution, not even

1 the police power can justify a taking of private property if the taking is intended to  
2 benefit private interests rather than the public as a whole.

3 115. The City has no evidence that the general public will realize any concrete,  
4 specific benefit from requiring owners of residential property to devote at least half  
5 of their property to the cultivation and maintenance of turf grass.

6 116. Unless this Court declares the Turf Grass Mandate an unconstitutional  
7 taking of private property for private purposes and enjoins the Defendant from  
8 enforcing the Turf Grass Mandate, the Plaintiffs will suffer great and irreparable  
9 harm.

10 **COUNT IV**  
11

12 **Taking or Damaging Private Property for Public Use  
Without Just Compensation  
(Mo. Const. Art. I, § 26)**  
13

14 117. The Plaintiffs incorporate and reallege the allegations contained in the  
15 foregoing paragraphs of this Complaint as if set forth fully herein.

16 118. Article I, § 26 of the Missouri Constitution states in relevant part “That  
17 private property shall not be taken or damaged for public use without  
18 compensation.”

19 119. Historically, this provision was understood to protect property owners such as  
20 the Duffners against government restrictions on the use of their property unless  
21 those restrictions had an identifiable connection to protecting the public health and  
22 safety.

23 120. The Missouri Supreme Court interpreted the language now comprising Article  
24

I, § 26 of the Missouri Constitution to limit the government's power to destroy or subvert a property owner's "unrestricted right of use, enjoyment, and disposal of" their property, even if "there be no actual or physical invasion" of that property. *See, e.g., City of St. Louis v. Hill*, 22 S.W. 861, 862 (Mo. 1893) (striking down a "boulevard law" because it deprived property owners of due process and subjected them to takings of property without compensation).

121. Historically, to the extent that the Missouri Constitution did permit government to restrict a citizen's use and enjoyment of their own private property, the Missouri Supreme Court held that the constitution required the government to compensate the property owner for the infringement on their rights. *See, e.g., City of Kansas City v. Liebi*, 252 S.W. 404 (Mo. banc 1923) (finding constitutional a "boulevard law" that provided for the compensation of property owners negatively affected by its provisions).

122. Missouri's constitutional text protecting property rights against uncompensated takings for public use has not changed in any significant way since the people of Missouri adopted it in 1875. *Compare Mo. Const. 1875 Art. II, § 21 with Mo. Const. Art. I, § 26.*

123. The meaning of constitutional guarantees never varies unless the people themselves alter the wording of the relevant constitutional provisions.

124. Yet as time has passed Missouri courts have tended to disregard citizens' constitutionally-protected property rights in favor of allowing government to impose any restriction it likes on the use of private property whether or not the government

1 provides any compensation.

2 125. This diminution of respect for the explicitly-stated constitutional protections  
3 for citizens' property rights has been claimed to be justified by judicial expansion of  
4 government's "police power," which is not defined or given clear scope in the Missouri  
5 Constitution.

6 126. Although the government's police power may be broad, the exercise of the  
7 police power cannot be made a cloak under which to overthrow or disregard  
8 constitutional rights; it cannot be that the passage of time has so enlarged the courts'  
9 conception of the police power that local governments may invoke that power to  
10 compel unwilling citizens to dedicate a government-designated percentage of their  
11 private property to the cultivation and maintenance of a government-designated  
12 plant that the property owner does not want.

13 127. To be clear, the Duffners are arguing that Article I, § 26 of the Missouri  
14 Constitution does not authorize the damaging of the Duffners' private property  
15 rights **at all**, and their requested remedy is the invalidation of the Turf Grass  
16 Mandate, **not** compensation for the loss of their property rights.

17 128. In the alternative, however, if the Court determines that the police power does  
18 justify local government's efforts to force private property owners to cultivate and  
19 maintain unwanted plants on their property, the Duffners seek a judicial declaration  
20 that Article I, § 26 of the Missouri Constitution requires the government to pay a  
21 private property owner subject to a regulatory taking just compensation for the loss  
22 of control over what they own.

1   129. The Duffners specifically assert that the Missouri Constitution's protections  
2   for the rights of private property owners are more extensive than those provided  
3   under the Fourteenth Amendment to the U.S. Constitution.

4   130. Furthermore, the Duffners assert that however extensive the police power  
5   might be, it does not authorize governments to force private property owners to  
6   devote half of their property and to expend their own labor and/or resources to  
7   cultivate and maintain a plant that they do not want, that has no bearing on the  
8   health or safety of the public at large, and that makes the private property owner  
9   sick.

10   131. To the extent that Missouri courts' interpretation and application of  
11   constitutional protections for the rights of private property owners have changed in  
12   the time since those provisions were last altered by the people of Missouri, the  
13   Duffners explicitly seek to preserve for Missouri Supreme Court review two  
14   questions: (1) whether the more recent interpretation and application of those  
15   constitutional protections are inconsistent with the people's intentions when they  
16   adopted those constitutional protections, and (2) if the more recent interpretation  
17   and application of those constitutional protections is inconsistent with the people's  
18   intentions when they adopted those constitutional protections, whether courts must  
19   alter the standard under which they review government infringements on the rights  
20   of private property owners.

22   132. Because the City has taken or damaged the Duffners' property for reasons not  
23   justified under the police power or, in the alternative, because the City has not

1 compensated the Duffners for the loss of their right to determine what plants they  
2 will grow on their property, the City has violated Article I, § 26 of the Missouri  
3 Constitution and the Turf Grass Mandate must be declared violative of the Missouri  
4 Constitution.

5 **COUNT V**

6 **Exceeding Statutory Zoning Power**  
7 **(§§ 89.020, 89.040, RSMo.)**

8 133. The Plaintiffs incorporate and reallege the allegations contained in the  
9 foregoing paragraphs of this Complaint as if set forth fully herein.

10 134. Missouri municipalities derive their zoning powers from state statutes;  
11 municipal zoning ordinances must conform to the terms of the delegation by the state  
12 and local governments may not by ordinance broaden the power delegated by statute.

13 135. The Missouri statute authorizing local governments to enact zoning laws  
14 empowers the passage of local ordinances “to regulate and restrict the height,  
15 number of stories, and size of buildings and other structures, the percentage of the  
16 lot that may be occupied, the size of yards, courts, and other open spaces, the density  
17 of population, the preservation of features of historical significance, and the location  
18 and use of buildings, structures and land for trade, industry, residence or other  
19 purposes.” § 89.020, RSMo.

20 136. Although this statute allows local governments to impose certain restrictions  
21 on uses of property, it does not authorize a Turf Grass Mandate such as the one at  
22 issue in this case, which forces property owners to dedicate a specified, arbitrary  
23 percentage of their property to the cultivation of a plant of the government’s

1 choosing.

2 137. The Duffners contend that because the Turf Grass Mandate does not regulate  
3 or restrict disfavored uses of property, but rather affirmatively forces owners,  
4 against their will and in the face of draconian fines and imprisonment, to use their  
5 private property in a government-designated way, it cannot properly be considered  
6 a “zoning” law at all.

7 138. Missouri law further clarifies the essential purposes for which zoning laws  
8 may be enacted, stating: “Such regulations shall be... designed to lessen congestion  
9 in the streets; to secure safety from fire, panic, and other dangers; to promote health  
10 and the general welfare; to provide adequate light and air; to prevent the  
11 overcrowding of land; to avoid undue concentration of population; to preserve  
12 features of historical significance; to facilitate the adequate provision of  
13 transportation, water, sewerage, schools, parks, and other public requirements.” §  
14 89.040, RSMo.

15 139. The City has no evidence that the Turf Grass Mandate lessens congestion in  
16 the streets.

17 140. The City has no evidence that the Turf Grass Mandate helps to avoid fire,  
18 panic, or other dangers.

19 141. The City has no evidence that the Turf Grass Mandate promotes health and  
20 the general welfare.

21 142. The City has no evidence that the Turf Grass Mandate provides “adequate  
22 light and air.”

1 143. The City has no evidence that the Turf Grass Mandate helps to avoid the  
2 overcrowding of land.

3 144. The City has no evidence that the Turf Grass Mandate helps to avoid undue  
4 concentration of population.

5 145. The City has no evidence that the Turf Grass Mandate helps to preserve  
6 features of historical significance.

7 146. The City has no evidence that the Turf Grass Mandate facilitates the adequate  
8 provision of transportation, water, sewerage, schools, parks, and other public  
9 requirements.

10 147. Thus, the Turf Grass Mandate does not serve any of the purposes for which  
11 the General Assembly authorized local governments to implement zoning laws.

12 148. The City's general zoning ordinance was adopted on May 11, 1989.

13 149. To the extent that the City's general zoning ordinance makes broad  
14 statements about the basic purposes of zoning laws, those statements cannot be  
15 relied upon to establish the justification of a specific "zoning" law passed nearly  
16 thirty years later.

17 150. By the City's logic, it could require private property owners to comply with  
18 almost any sort of mandate regarding the use of their property—no matter how  
19 disconnected it might be from any legitimate relationship to public health or safety  
20 or the limits of §§ 89.020 and 89.040, RSMo.—and simply by labeling the mandate a  
21 "zoning law" the City could avoid any serious judicial scrutiny of the mandate.

22 151. Because the Turf Grass Mandate exceeds the zoning authority the General

1 Assembly granted to the Defendant under § 89.020, RSMo., and because the Turf  
2 Grass Mandate is not designed to further any of the purposes for which the General  
3 Assembly has authorized the implementation of zoning ordinances, the Turf Grass  
4 Mandate is not a lawful exercise of the Defendant's zoning powers and is therefore  
5 void.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, the Plaintiffs respectfully request that this Court:

8 A. Enter a judgment declaring that the Turf Grass Mandate contained in St.  
9 Peters Code § 405.390(A)(4) is unconstitutional on its face and as applied  
10 to the Duffners because it unjustifiably violates citizens' right to use their  
11 private property in lawful, harmless ways of their own choosing, which is  
12 a fundamental right protected under the Fourteenth Amendment to the  
13 U.S. Constitution;

14 B. Enter a judgment declaring that the Penalty Provisions contained in St.  
15 Peters Code § 405.815 may not constitutionally be applied to persons, such  
16 as the Duffners, who choose not comply with the Turf Grass Mandate,  
17 because such an application would violate the prohibitions on Excessive  
18 Fines and Cruel and Unusual Punishment under the Eighth Amendment  
19 to the U.S. Constitution (as applied to state and local governments through  
20 the Fourteenth Amendment) and Article 1, § 21 of the Missouri  
21 Constitution;

22 C. Enter a judgment declaring that the Turf Grass Mandate contained in St.  
23

1 Peters Code § 405.390(A)(4) takes private property for a private use,  
2 thereby violating Article I, § 28 of the Missouri Constitution;

3 D. Enter a judgment declaring that the Turf Grass Mandate contained in St.  
4 Peters Code § 405.390(A)(4) unjustifiably damages the Plaintiffs' property  
5 for a public use without compensating them, thereby violating Article I, §  
6 26 of the Missouri Constitution;

7 E. Enter a judgment declaring that §§ 89.020 and 89.040, RSMo., do not  
8 authorize the Defendant's adoption or enforcement of the Turf Grass  
9 Mandate contained in St. Peters Code § 405.390(A)(4);

10 F. Enter preliminary and permanent injunctions prohibiting the Defendant  
11 from enforcing the Turf Grass Mandate contained in St. Peters Code §  
12 405.390(A)(4) against the Plaintiffs or any other owner of residential  
13 property in St. Peters;

14 G. Enter preliminary and permanent injunctions prohibiting the Defendant  
15 from imposing or enforcing against the Duffners the Penalty Provisions  
16 contained in St. Peters Code § 405.815 on account of their noncompliance  
17 with the Turf Grass Mandate;

18 H. Award nominal damages;

19 I. Award costs of this lawsuit, including reasonable attorneys' fees, pursuant  
20 to 42 U.S.C. § 1988; and

21 J. Enter all further legal and equitable relief that the Court may deem just  
22 and proper.

23

24

1  
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3  
4 Dated this 19<sup>th</sup> day of December, 2016.

5  
6 Respectfully submitted,

7   
8

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